



- (2) Is claimant entitled to future medical treatment?
- (3) Was claimant's refusal to submit to shoulder surgery unreasonable pursuant to K.A.R. 51-9-5?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented, the Appeals Board finds that the Award of the Administrative Law Judge should be affirmed. Claimant suffered accidental injury on December 29, 1997, when he was involved in an automobile accident which the parties have stipulated arose out of and in the course of his employment with respondent. Claimant advised respondent of the accident, but missed no work following the accident. Claimant's medical expenses were paid by his PIP insurance from the automobile accident, and no claim for medical treatment was made against respondent.

Claimant continued working his regular job, although by his own testimony he was somewhat limited in how much he could do. He advised respondent that he was in need of medical treatment and that the injury to his left arm and shoulder were affecting his ability to work at his normal rate of speed. Claimant stated that his ability to work was getting slower.

Claimant was treated by several doctors, and it was recommended by Dr. Rhodes that he undergo surgery on his shoulder. Claimant was reluctant to have surgery as Dr. Rhodes, his treating physician, was unable to guarantee that the surgery would be performed arthroscopically. Claimant was concerned about an open reduction surgical procedure on his shoulder as, at the time he was receiving treatment, he was laid off from work with respondent and was seeking other employment. Claimant was concerned that the surgery would disable him from seeking employment and he was, therefore, reluctant to proceed. Claimant did testify that, if he were guaranteed by Dr. Rhodes that the surgery would be performed arthroscopically, he probably would have proceeded with the surgery. His concern that the surgery would be done as an open reduction caused him to decline.

It was stipulated that respondent did not file an accident report in this case as is required under K.S.A. 44-557. It is also stipulated that claimant did not provide written claim under K.S.A. 44-520a within 200 days of the date of accident or the last payment of benefits, but did provide a written claim within one year of the date of accident.

K.S.A. 44-520a states in part:

No proceedings for compensation shall be maintainable under the workmen's compensation act unless a written claim for compensation shall be served upon the employer by delivering such written claim to him or his

duly authorized agent, or by delivering such written claim to him by registered or certified mail within two hundred (200) days after the date of the accident, or in cases where compensation payments have been suspended within two hundred (200) days after the date of the last payment of compensation

. . . .

K.S.A. 44-557 makes it the respondent's responsibility to prepare and file an accident report with the Director when the employer or the employer's supervisor has knowledge of the accident, with the report to be filed:

. . . within 28 days, after the receipt of such knowledge, if the personal injuries which are sustained by such accidents, are sufficient wholly or partially to incapacitate the person injured from labor or service for more than the remainder of the day, shift or turn on which such injuries were sustained.

Respondent argues that, as claimant continued performing his regular duties without missing any work, respondent was not obligated under K.S.A. 44-557 to file an accident report and, therefore, claimant was obligated to file his written claim within 200 days under K.S.A. 44-520a. However, claimant testified that, while performing his duties for respondent, he was in pain and that his injury limited his ability to perform his job. Claimant stated he was moving slower and that he advised his supervisor of his problems. Additionally, claimant was referred for physical therapy by his treating physician and was required to rearrange his work schedule in order to accommodate the physical therapy sessions.

The Appeals Board finds that claimant was partially incapacitated from performing work for more than the remainder of the day on which he was injured. Therefore, respondent was obligated under K.S.A. 44-557 to file an accident report within 28 days of receiving knowledge of claimant's accident. As respondent failed to do so, the written claim time was extended to one year. Claimant's written claim of December 21, 1998, was within one year of claimant's accident date of December 29, 1997.

Respondent also objected to claimant's receipt of benefits, alleging under K.A.R. 51-9-5 that claimant unreasonably refused to submit to surgery and, therefore, claimant's compensation should be terminated. However, claimant testified of several concerns associated with the surgery which, in the Appeals Board's eyes, were reasonable. Therefore, the Appeals Board finds that K.A.R. 51-9-5 does not apply to this circumstance and claimant will not be limited from receiving compensation.

The Appeals Board finds that the Award of the Administrative Law Judge granting claimant an award of 11.5 percent to the left upper extremity at the shoulder per the stipulation of the parties should be affirmed.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Brad E. Avery dated July 18, 2000, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 2001.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Jeff K. Cooper, Topeka, KS  
Michelle Daum Haskins, Kansas City, MO  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Director